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UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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Cambridge, MA 02138-2216

In re Application of:
PICHLER, Wolfgang, et al.
U.S. Application No.: 10/030,724
PCT No.: PCT/AT01/00110
International Filing Date: 12 April 2001
Priority Date: 11 May 2000
Attorney's Docket No.: 010505-US
For: SELF-INKING STAMP

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DECISION

This decision is issued in response to applicants' 08 January 2003 submission, treated herein as a petition under 37 CFR 1.181 to confirm the timely submission of a response to the Notification Of Missing Requirements mailed 12 March 2002. No petition fee is required.

BACKGROUND

On 12 April 2001, applicants filed international application PCT/AT01/00110 which claimed a priority date of 11 May 2000 and which designated the United States. On 15 November 2001, a copy of the international application was communicated to the United States Patent And Trademark Office ("USPTO") by the International Bureau ("IB").

A Demand was not filed with the International Preliminary Examining Authority electing the United States prior to the expiration of nineteen months from the priority date. As a result, the deadline for payment of the basic national fee was twenty months from the priority date, i.e., 11 January 2002.

On 11 January 2002, applicants filed a transmittal letter for entry into the national stage in the United States accompanied by, among other materials, payment of the small entity basic national fee and an English translation of the international application.

On 12 March 2002, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497 and the small entity surcharge for providing the oath or declaration later than twenty months from the priority date were required. The Notification also informed applicants that the failure to submit these materials within two months of the mail date of the Notification would result in abandonment of the application.

On 08 January 2003, applicants filed the materials considered herein as a petition under 37 CFR 1.181. The petition asserts that applicants filed a timely response to the Notification Of Missing Requirements on 02 April 2002 (via first class mail). Attached to the petition are copies of the materials purportedly mailed on 02 April 2002, including an executed declaration and a check for the \$65 surcharge.

DISCUSSION

A review of the application file reveals that the original declaration allegedly mailed 02 April 2002 under 37 CFR 1.8 is not located therein.

37 CFR 1.8(b) states:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission.

The present submission does not satisfy all the requirements of 37 CFR 1.8(b). Specifically, applicants have not satisfied the requirement of 37 CFR 1.8(b)(3). Applicants are required to provide a more specific firsthand statement from the person who mailed the submission (i.e., counsel or the employee in counsel's office who actually did the mailing) detailing the timely mailing of the response (i.e., "on 02 April, 2002, I prepared and signed a communication on the above-referenced application, enclosing a signed declaration and check in response to a Notification of Missing Parts of the Application dated 12 March 2002, and depositing this envelope with the USPS as first class mail . . .").

Until such a statement is submitted, 37 CFR 1.8(b) cannot be applied to the present submission. In addition, payment of the \$65 small entity surcharge is also still required.

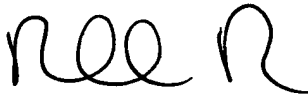
CONCLUSION

Applicants' petition is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181" and should include the materials discussed above (i.e., a clear firsthand statement in satisfaction of 37 CFR 1.8(b)(3) and the required surcharge payment.

No additional petition fee is required. Failure to file a timely response will result in abandonment of the application.

Please note that, effective May 1, 2003, the Office is changing its correspondence address. Any further correspondence with respect to this matter deposited with the United States Postal Service on or after May 1, 2003 should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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